



# The Attorney General of Texas

March 17, 1981

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Attorney General

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Affirmative Action Employer

**Mr. Nelson A. Clare**  
Assistant City Attorney  
200 Main Plaza, Suite 101  
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Open Records Decision No. 266

Re: Availability to public of  
investigative report prepared by  
city fire department

Dear Mr. Clare:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of two investigative reports prepared by the Fire Department of the city of San Antonio. On April 17 and again on May 22, 1980, the assistant fire chief submitted to the fire chief reports of an investigation arising from the termination of a probationary firefighter. The particular probationary firefighter subsequently filed a complaint of discrimination with the federal Equal Employment Opportunity Commission [EEOC], alleging that certain other probationary firefighters received preferential treatment. EEOC complaints have also been filed by two other probationary firefighters who were terminated and who are peripherally discussed in the investigative reports. All these cases are presently pending before the EEOC. You suggest that the investigative reports are excepted from disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act.

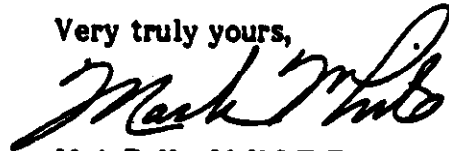
Section 3(a)(3) excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

You have determined that there is a reasonable probability of litigation involving one or more of the complaints, and that, as a result, both investigative reports should be withheld from disclosure in their entirety, since their release might "adversely affect the city's interest." See Open Records Decision No. 135 (1976). Since all three complaints are pending

before the EEOC, we believe that this determination is reasonable. Unlike the situation in Open Records Decision No. 139 (1976), there is here more than a mere chance of litigation. See Open Records Decision Nos. 135 (1976); 141 (1976). It is therefore our decision that the two investigative reports prepared by the San Antonio Fire Department are excepted from disclosure at this time by section 3(a)(3) of the Open Records Act. In view of this determination, we need not address the applicability of the other two exceptions you have claimed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark White", written over the typed name.

MARK WHITE  
Attorney General of Texas

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APPROVED:  
OPINION COMMITTEE

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